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BIODIVERSITY LITIGATION

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Biodiversity Litigation

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Abstract: Biological diversity enjoys judicial protection, but due to the fragmented character of the legal regime, the localization of biodiversity loss, as well as the localized nature of measures to prevent it, judicial practice in this area is fragmented and unsystematic. The growing number of cases on conservation of species and ecosystems does not produce qualitatively different results beyond the resolution of a specific legal issue – litigation is not strategic, that is, aimed at generating broad social and legal effects. This paper examines the main trends in biodiversity litigation at the national and international levels, seeking to categorize them and identify their common features.

Keywords: biodiversity, strategic litigation, biodiversity litigation, species protection, Rights of Nature, biodiversity loss

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Abbreviations

Aarhus Convention	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998
Bern Convention	Convention on the Conservation of European Wildlife and Natural Habitats, 1979
BUND	Bund für Umwelt und Naturschutz Deutschland
CBD	Convention on Biological Diversity, 1992
CERD	Convention on the Elimination of All Forms of Racial Discrimination, 1965
Certain Activities 2015	Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, ICJ
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973
CJEU	Court of Justice of the European Union
EIA	Environmental Impact Assessment
GATT	General Agreement on Tariffs and Trade, 1947
IACtHR	Inter-American Court of Human Rights
IACtHR Climate Change Advisory Opinion	Advisory Opinion OC-32/25 of 29 May 2025
ICJ	International Court of Justice
ICJ Climate Change Advisory Opinion	Obligations of States in respect of Climate Change. Advisory Opinion of 23 July 2025
ICRW	International Convention for the Regulation of Whaling, 1946
ITLOS	International Tribunal for the Law of the Sea
ITLOS Climate Change Advisory Opinion	Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024

La Oroya	Case of the Inhabitants of La Oroya v. Peru. Judgment of 27 November 2023, IACtHR
Lhaka Honhat	Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Judgment of 6 February 2020, IACtHR
Protocol of San Salvador	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" 1988
Pulp Mills	Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010
Rama and Kriol	Case of the Rama and Kriol Peoples, Black Creole Indigenous Community of Bluefields and Others vs. Nicaragua. Judgment of 1 April 2024, IACtHR
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures, 1994
UNCLOS	United Nations Convention on the Law of the Sea, 1982
WTO DSB	Dispute Settlement Body of the World Trade Organization

Introduction

Over the past decade, there has been a marked increase in the number of environmental cases.¹ In the last three years alone, five international courts and tribunals have delivered judgments and advisory opinions concerning States' climate obligations.²

Environmental degradation, however, is caused neither exclusively by anthropogenic greenhouse gas emissions nor solely within the climate system. The “triple planetary crisis” as identified by the United Nations Environment Programme encompasses not only climate change, but also pollution and biodiversity loss.³ The interdependence between the climate system and biodiversity has repeatedly been emphasized in reports of the Intergovernmental Panel on Climate Change,⁴ in the work of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services,⁵ and in the conclusions of international courts and tribunals.⁶

Yet biodiversity litigation remains fragmented and, for the time being, non-strategic.⁷ There are scarcely any known cases that address biodiversity loss as a global challenge and, on that basis, contest the ineffectiveness or inadequacy of national policies or international cooperation. There are several factors to explain this. “Biological diversity” is itself a complex notion, encompassing variability among living organisms from all sources, diversity within species, between species and of ecosystems.⁸ Species and ecosystems, as components of biodiversity, also enjoy legal protection as separate objects. At the national level, the legal framework governing biodiversity is fragmented and consists mainly of discrete instruments concerning the sustainable use of particular components of nature, such as wildlife, forests, and aquatic biological resources, etc. Besides the “umbrella” Convention on Biological Diversity (CBD), numerous treaties dealing with cooperation to protect

¹ The legal regime for biodiversity conservation forms part of international environmental law, while the protection of species and ecosystem diversity forms part of measures to preserve the environment, including the climate system. Accordingly, in some paragraphs below, the terms “environmental measures”, “nature conservation”, “environmental protection”, “biodiversity conservation”, and “biodiversity protection measures” are used interchangeably.

² The decisions in question are the following: ITLOS. Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law. Advisory Opinion, 21 May 2024 (**ITLOS Climate Change Advisory Opinion**). [URL](#); ICJ. Obligations of States in respect of Climate Change. Advisory Opinion of 23 July 2025 (**ICJ Climate Change Advisory Opinion**). [URL](#); IACtHR. Advisory Opinion OC-32/25 of May 29 2025 (**IACtHR Climate Change Advisory Opinion**). [URL](#); ECtHR. Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland. Judgment of 9 April 2024. [URL](#); EFTA Court. Judgment of 21 May 2025. Case E-18/24. [URL](#). For further reading see also Kudinov, A.S. (2025). *International Climate Litigation in 2024: An Overview of the Legal Positions of the ECtHR and the International Tribunal for the Law of the Sea* (in Russian). International and Comparative Law Research Center. [URL](#); Nikitin, A., Solntsev, A., Shmakova, A. (2026). *Advisory Opinions of the ICJ and IACtHR on Climate Obligations of States* (in Russian). International and Comparative Law Research Center. [URL](#)

³ *UN environment agency calls for urgent action on ‘triple planetary crisis’*. (2025). UN News. [URL](#)

⁴ For examples, see IPCC. (2022). *Climate Change 2022: Impacts, Adaptation and Vulnerability*. [URL](#)

⁵ Viña, A., Frapolli, E.C., Hussain, S.A., Merino, L. et al. (2019). *Chapter 2.1. Status and Change – Drivers of Change* in IPBES. (2019). *Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. [URL](#); IPCC-IPBES. *Co-sponsored Workshop Report on Biodiversity and Climate Change*. (2021). IPBES. [URL](#)

⁶ For example, see ICJ Climate Change Advisory Opinion, paras 73–77, 325–330.

⁷ Strategic litigation is a type of judicial proceedings which seeks not only resolution of a concrete legal dispute, but also achievement of a broader legal and social change, such as legislation amendments, creation of a new judicial precedent, shift in the sustained legal practice, etc. The notion and examples of strategic litigation are further clarified in **Part III**. See also Pas, K. van der. (2021). *Conceptualising strategic litigation*. *Oñati Socio-Legal Series*, Volume 11 Issue 6(S) (2021), S116–S145: Investigations – Investigaciones – Ikerlanak. [URL](#); Ramsden, M. (2022). *Strategic Litigation before the International Court of Justice: Evaluating Impact in the Campaign for Rohingya Rights*. *EJIL* (2022), Vol. 33 No. 2, 441–472. [URL](#)

⁸ Convention on Biological Diversity, 5 June 1992 (entered into force for the Russian Federation on 5 April 1995), Art. 2.

particular species and ecosystems or regulating specific sectors of economic activity involving the use of natural resources operate within the international legal system.⁹

Biodiversity loss is often experienced locally, while measures to conserve species and ecosystems generally remain within national borders. Together with the fragmentation of the applicable law, this means that judicial protection of biodiversity most often takes the form of resolving narrowly framed legal disputes, usually concerning conformity with legal procedures. Given their specificity, the multiplicity of such cases does not necessarily coalesce into a coherent body of law capable of strengthening the legal regime for biodiversity conservation. At the same time, the emergence of the first cases addressing the systemic causes of biodiversity loss is an important development: this approach may enable a more comprehensive protection of species and ecosystems and help slow the worsening global crisis.

This paper seeks to identify the principal types of biodiversity litigation at the national and international levels and to determine whether strategic litigation is emerging in this field. The cases discussed do not constitute an exhaustive picture. The first part draws on a representative selection of different types of national biodiversity-related cases, with particular attention to jurisdictions known as so-called “biodiversity hotspots” (which contain high concentrations of biodiversity). The second part examines the practice of the widely known international courts, tribunals, and inter-State dispute-settlement bodies, without purporting to survey every forum in which disputes between States may be resolved.

This paper may be useful to specialists in the field of sustainable development and environmental protection, policy-makers, and practitioners engaged in environmental litigation.

⁹ See, for example, Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, 24 February 1972 (entered into force for the Russian Federation on 19 July 2015); Agreement on the Conservation of Gorillas and Their Habitats, 26 October 2007 (the Russian Federation not a party); Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, 14 February 1982 (the Russian Federation not a party); Agreement on the Conservation of Albatrosses and Petrels, 19 June 2001 (the Russian Federation not a party), etc.

Summary

1. Biodiversity loss is a global problem comparable to the climate crisis. Public awareness of climate change has grown considerably over the past decade: five international courts and tribunals have delivered judgments and advisory opinions on this issue, while national courts have seen a surge in climate litigation both against public authorities for ineffective policies and against companies for their contribution to climate change.
2. Despite the seriousness and scale of both environmental challenges, cases seeking to protect species and ecosystems remain relatively little known. Biodiversity-related judicial proceedings are in fact numerous, but the avenues of judicial protection pursued by applicants have not had effects sufficiently far-reaching to attract attention comparable to that generated by climate litigation.
3. National case law is clearly dominated by cases challenging specific actions of public authorities for failure to comply with environmental legislation (**paras 14-23 below**). Some concern the licensing and authorization of large-scale projects, including whether a project's impacts on particular species' habitats were fully assessed, whether quotas for the harvesting of living resources were properly substantiated, or whether changes to a species' conservation status were justified. Other "public-law" cases are also common, including proceedings imposing criminal, administrative, or other responsibility on companies or individuals for breaches of legislation protecting particular species and ecosystems or governing access to, and use of, living resources.
4. The human-rights category of the case law has two dimensions: the protection of biodiversity as an indispensable condition for the enjoyment of human rights (**paras 24-26 below**), and the recognition of subjective rights of nature and its individual components in order to secure effective judicial protection and improve public authorities' compliance with their obligations concerning the use of natural resources (**paras 34-40 below**). Although both dimensions seek to maintain species and ecosystems in a favourable condition, they rest respectively on anthropocentric and ecocentric approaches, which conceive of the environment differently. Under the former, the well-being of nature and the diversity of living organisms are considered in relation to the conditions of human life. Under the latter, the emphasis is on nature's intrinsic value and on the need to maintain biodiversity in order to protect the natural system as such.
5. Finally, alongside the long-established and widespread cases imposing civil liability on companies for environmental damage, attempts are increasingly being made to hold companies liable for failures to comply with due-diligence standards (**paras 27-33 below**).
6. National case law is extensive and multifaceted, but difficult to systematize. The many existing judgments can scarcely be said to form a single strategic programme for addressing biodiversity loss. The first case directed at the systemic causes of species and ecosystems diversity degradation may be the constitutional complaint filed in 2024 by several non-governmental organizations before the German Federal Constitutional Court, seeking the adoption of the comprehensive national legislation on biodiversity conservation (**paras 93-97 below**). For the first time, the challenge is directed not at discrete acts of public authorities, but at the State's overall policy and legislative framework for the protection of biological resources.
7. The practice of international courts and tribunals is less extensive and representative. Biodiversity conservation issues are directly regarded most frequently by the Court of Justice of the European Union (**CJEU**), which applies directives and regulations that comprehensively

govern the protection of biological diversity (**paras 81-87 below**). Biodiversity appears less often in the practice of other international courts and tribunals, such as the International Court of Justice (**ICJ**) and the International Tribunal for the Law of the Sea (**ITLOS**). Indeed, the only case in which the ICJ was asked directly to determine compliance with international obligations to conserve particular species was *Whaling in the Antarctic*. Nevertheless, findings made in environmental cases and in cases concerning States' obligations on sustainable use of living resources remain relevant for biodiversity as a component of the natural system (**paras 45-52 and 53-57 below**).

8. Because biological resources are the object of economic activity and, sometimes, of Indigenous peoples' traditional practices, international courts and dispute settlement bodies such as the Inter-American Court of Human Rights (**IACtHR**) and the World Trade Organization Dispute Settlement Body (**WTO DSB**) have also addressed States' biodiversity-related obligations (**paras 58-71 and 72-80 below**). Although their findings have not always been based on treaties or other legal instruments specifically devoted to biodiversity protection, the legal relationships between ecosystem services and trade policy, between living resources and Indigenous peoples' rights, directly affect the legal regime for biodiversity conservation.
9. The arbitration between Azerbaijan and Armenia may mark a new step in the development of international biodiversity case law (**paras 98-104 below**). Since the dispute concerns biodiversity-related obligations under a species-conservation convention, it may demonstrate how broadly framed duties to conserve species and ecosystems can be given sufficiently concrete legal content to ensure their practical implementation. It might be quite instructive to follow the course of this dispute, as Azerbaijan has advanced similar environmental arguments against Armenia in the pending proceedings before the ICJ, although those arguments were rejected at the jurisdictional stage.

I. National Case Law on Biodiversity Protection

1. Main Types of National Biodiversity Litigation

10. In many jurisdictions, domestic biodiversity law consists of legislation and secondary acts protecting particular components of biodiversity and/or regulating narrowly defined procedures connected with the use of biological resources.¹⁰
11. Consequently, the overwhelming majority of cases challenge acts or decisions of public authorities that are governed by these specific legal instruments. Although this body of national case law is extensive, biodiversity loss is generally not the direct subject matter of such disputes. It is instead either an additional point to be proved when establishing procedural violations by public officials, or a factual circumstance considered when environmental damage is proved and quantified.
12. An analysis of case law across different jurisdictions¹¹ reveals several main categories of biodiversity litigation:
 - i. The largest part of case law consists of what this paper calls the “public-law sphere”.¹² For present purposes, it includes:
 - challenges to acts and decisions of public authorities concerning the licensing and authorization of economic projects, most commonly disputes involving environmental impact assessment;
 - challenges to acts and decisions of public authorities alleging that their measures to conserve biodiversity are inadequate or ineffective; and
 - proceedings imposing criminal, administrative, or other responsibility for breaches of legislation protecting particular components of the natural environment, among other matters.
 - ii. One of the biodiversity litigation trends over the past decade has been the recognition that maintaining biodiversity in a favourable condition is an essential component of certain human rights.
 - iii. Another category comprises claims against companies and individuals for compensation for environmental damage. Cases concerning companies’ compliance with the due

¹⁰ Not every country has framework biodiversity legislation. Such laws exist, for example, in Costa Rica, India, Japan, South Africa, and Vietnam. No study currently offers a comprehensive world-wide analysis of the biodiversity legislation, although several papers compare selected jurisdictions. See Medaglia, J.C., Phillips, F.-K., Perron-Welch, F. et al. (2014). *Biodiversity Legislation Study: A Review of Biodiversity Legislation in 8 Countries*. Centre for International Sustainable Development Law. [URL](#); Ferraro, G., Failler, P. (2024). *Biodiversity, multi-level governance, and policy implementation in Europe: a comparative analysis at the subnational level*. *Journal of Public Policy*, Volume 44, Issue 3, September 2024, pp. 546–572. [URL](#); Antonelli, G., Qin, T., Ferroni, M.V., Erwin, A. (Eds.). (2024). *Biodiversity Laws, Policies and Science in Europe, the United States and China*. Springer Cham. [URL](#); Kass, M. *Biodiversity laws of the US and EU* in Yang, T., Telesetsky, A., Phillips, S.K. (Eds.). (2025). *Comparative Environmental Law*. Edward Elgar Publishing. [URL](#)

¹¹ Many cases discussed in this paper were identified through the Biodiversity Legal Database, which contains international legal instruments, international and national cases concerning the protection and conservation of species, ecosystems, and genetic diversity. For further information about this ICLRC project, see: *ICLRC Launches Biodiversity Legal Database*. (2025), ICLRC. [URL](#). The analysis in this paper does not pretend to be exhaustive; it includes a cross-jurisdictional selection sufficient to illustrate the case law within each category of litigation.

¹² This term is used solely for the purposes of the present paper.

diligence standard¹³ and their consideration of socio-economic and environmental risks in business activities have also begun to emerge within this category of biodiversity litigation.

- iv. In certain jurisdictions, cases have addressed the recognition of legal personality for nature and its individual components.
13. In terms of the relief sought, the most common cases concern breaches of environmental law by public authorities or by private actors. Courts nevertheless often go further in their reasoning and also consider violations of human rights or of rights held by components of the natural environment. The categories identified above may therefore overlap within a single dispute.

1.1. “Public-Law” Biodiversity Litigation

14. The largest category of cases on legal protection of biodiversity comprises challenges to acts and/or decisions of public authorities for non-compliance with legislation prescribing particular procedures or criteria for taking account of the condition of ecosystems and species.¹⁴ Most commonly, these cases concern licenses or permits for extractive activities or construction in areas rich in species or ecosystem diversity, or near the habitats of protected species.
15. Petitions challenging acts and/or decisions of public authorities are usually brought by private actors, whether civil-society organizations or individual citizens. In addition to establishing a breach of the law, applicants in such cases must usually show that the unlawful conduct threatened or infringed their rights and interests – in substance, that it caused them injury. Courts’ decisions may therefore contain findings not only on the issue raised by applicants, i.e. public authority’s failure to follow legally prescribed procedures, but also on violations of human rights. A public prosecutor may bring similar proceedings against other public authorities on the basis of complaints by citizens and civil-society organizations, acting on

¹³ The litigation on due diligence is mainly rooted in legal developments following the adoption in 2011 of the *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, HR/PUB/11/04. [URL](#). Legislation of certain States and acts of the European Union now require companies to identify risks of human-rights violations and environmental harm both from their own activities and from those of their business partners, take measures to mitigate risks and prevent harm, monitor those measures continuously, and assess their effectiveness. These obligations constitute part of the due diligence standard in the legislation and case law examined in the present paper. See **Part I.1.3**

¹⁴ In a comparable study of 214 cases, approximately 100 concern challenging acts or decisions of public authorities for non-compliance with procedural rules, failure properly to consider ecosystem factors, or ineffectiveness of the measures adopted. See Fenn, R. (2025). Systemic biodiversity litigation: how litigation addresses structural causes and drivers of biodiversity loss. *Journal of Environmental Law*, 2025, 37, 511-536, p. 522; Fenn, R. (2025). Data for Systemic biodiversity litigation: How litigation addresses structural causes and drivers of biodiversity loss. DataverseNL. [URL](#). Examples from Russian case law include: Апелляционное определение Сахалинского областного суда от 20.01.2022 по делу № 33а-21/2022 (Appeal Decision of the Sakhalin Regional Court of 20 January 2022, Case No. 33а-21/2022). [URL](#); Решение Кировского районного суда г. Иркутска от 26.03.2019 № 2А-1528/2019 2А-1528/2019-М-1001/2019 М-1001/2019 по делу № 2А-1528/2019 (Judgment of the Kirovsky District Court of Irkutsk of 26 March 2019, Case No. 2А-1528/2019). [URL](#); Решение Арбитражного суда Краснодарского края от 11.01.2012 по делу № А-32-3-501/2010 (Judgment of the Commercial Court of the Krasnodar Territory of 11 January 2012, Case No. А32-30501/2010). [URL](#); Определение Восьмого кассационного суда общей юрисдикции от 24.03.2026 № 88-5728/2026 (Decision of the Eighth General Jurisdiction Court of Cassation of 24 March 2026, No. 88-5728/2026).

behalf and in the interests of an indeterminate group of persons.¹⁵ A prosecutor may also commence proceedings by themselves (without a complaint from a private actor)¹⁶ where indications of a violation of legislation have been identified, acting to protect the rights and interests of the State.

16. For example, in *Sierra Club v. Babbitt* (the United States) the non-governmental environmental organization had to establish that the grant of construction permits could injure rights of its participants and their interests in order to have standing.¹⁷ The court found that the applicants had suffered an injury because the endangered Alabama beach mouse and its habitat, which the construction activities put at risk, was of recreational and economic use to the applicants. Sierra Club members used the area for recreation; they also noted that the mice dispersed sea oat seeds on dunes promoting the plants' growth. Moreover, one of the plaintiffs demonstrated that the value of their property depended upon sea oats protecting it from erosion, and thus the loss of the Alabama beach mouse threatened their property.
17. On the merits, the court held that the US Fish and Wildlife Service's decision to issue special permits for the construction¹⁸ was arbitrary and capricious. In particular, the agency had failed to consider the cumulative impacts of the proposed activity on the habitat destruction and had relied on uncertain future actions, assumptions and inaccurate, insufficient data.
18. Similarly, in *BirdLife Estonia v. Environmental Board* (Estonia), peat-extraction permits were annulled because the information gathered concerning the cumulative effects of the proposed extraction on the habitats of rare bird species was insufficient.¹⁹

¹⁵ For example, proceedings concerning the construction of a bottled-water plant within the Kultuk urban settlement began with complaints by individuals and legal persons to the West Baikal Interdistrict Environmental Prosecutor's Office alleging violations of their rights and interests. The prosecutor's investigation found that the State environmental expert review opinion approving the project had been prepared in breach of environmental legislation; the environmental impact assessment was incomplete; and serious violations had occurred in securing public participation in the preparation and discussion of the assessment materials for the proposed activity. Impacts on vegetation, wildlife, and other natural resources had not been considered. The West Baikal Interdistrict Environmental Prosecutor consequently brought an administrative claim seeking to have both the favourable review opinion and the order approving it declared unlawful. See Решение Кировского районного суда г. Иркутска от 26.03.2019 № 2А-1528/2019 2А1528/2019-М-1001/2019 М-1001/2019 по делу №2А-1528/2019 (Judgment of the Kirovsky District Court of Irkutsk of 26 March 2019. Case No. 2А-1528/2019). [URL](#)

¹⁶ Such cases most commonly involve an administrative claim seeking to invalidate, in whole or in part, a legal act or an act possessing normative characteristics, or challenging decisions, acts, or omissions of public authorities where public interests have been infringed. Several rulings of the Supreme Court of the Russian Federation address a prosecutor's standing: Постановление Пленума Верховного Суда Российской Федерации от 28.06.2022 № 21 «О некоторых вопросах применения судами положений главы 22 Кодекса административного судопроизводства Российской Федерации и главы 24 Арбитражного процессуального кодекса Российской Федерации» (Ruling No. 21 of the Plenary Session of the Supreme Court of 28 June 2022, "On Certain Issues concerning the Application by Courts of Chapter 22 of the Code of Administrative Judicial Procedure of the Russian Federation and Chapter 24 of the Arbitrazh Procedure Code of the Russian Federation"). [URL](#); Постановление Пленума Верховного Суда Российской Федерации от 25.12.2018 № 50 «О практике рассмотрения судами дел об оспаривании нормативных правовых актов и актов, содержащих разъяснения законодательства и обладающих нормативными свойствами» (Ruling No. 50 of the Plenary Session of the Supreme Court of 25 December 2018, "On Judicial Practice in Cases Challenging Normative Legal Acts and Acts Containing Legislative Guidance and Possessing Normative Characteristics"). [URL](#); Постановление Пленума Верховного Суда Российской Федерации от 18.10.2012 № 21 «О применении судами законодательства об ответственности за нарушения в области охраны окружающей среды и природопользования», п. 31. (Ruling No. 21 of the Plenary Session of the Supreme Court of 18 October 2012, "On the Application by Courts of Legislation Governing Responsibility for Violations in the Field of Environmental Protection and the Use of Natural Resources"), para. 31. [URL](#)

¹⁷ *Sierra Club v. Babbitt*, 15 F. Supp. 2d 1274 (S.D. Ala. 1998). Biodiversity Legal Database. [URL](#)

¹⁸ More precisely, the proceedings concerned challenging special instruments authorizing to carry out projects that may accidentally harm or kill threatened or endangered species. These instruments are known as incidental take permits.

¹⁹ *BirdLife Estonia v. Environmental Board*. Biodiversity Legal Database. [URL](#)

19. Within the public-law litigation category, cases also frequently concern the determination or alteration of the conservation status of species,²⁰ and the use of scientific evidence in setting quotas for fishing or hunting wildlife.²¹
20. Relying on scientific evidence concerning the condition of species and ecosystems, courts have often found public authorities' decisions and measures inadequate or inconsistent with biodiversity-conservation objectives. Depending on the legal system, such cases may be initiated either by private petitioners – usually civil-society organizations – or by a public prosecutor. In *France Nature Environnement and Others*, for example, acting on an environmental organization's application, the French Conseil d'État²² held that actions of public authorities had to be strengthened and additional protective measures adopted for small cetaceans in the Bay of Biscay in view of their persistently high mortality, continued incidental capture of those protected species, and the ineffectiveness of the acoustic deterrent devices in use.²³
21. Criminal, administrative, and other enforcement proceedings also account for a substantial share of public-law cases before national courts. They often concern unlawful hunting, overfishing, and other conduct by private actors arising from ordinary economic activity and everyday use of natural resources.²⁴ Since most such proceedings involve public prosecution, prosecutors initiate them and represent the State before the court.
22. Some proceedings have a more evident connection with States' international legal obligations. Examples include cases concerning the unlawful issuance or use of export/import permits or re-export certificates under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).²⁵
23. The best-known example is a 2014 Belgian criminal case against a transnational criminal group that had unlawfully taken the eggs and chicks of birds threatened with extinction in France and Spain, and then sold them on commercial markets in other countries using forged import CITES documentation.²⁶ The court also emphasized that illegal trade in rare and

²⁰ See, for example, *Center for Biological Diversity v. Haaland*. Biodiversity Legal Database. [URL](#); *Crow Indian Tribe v. United States*, No. 18-36030 (9th Cir. 2020). Biodiversity Legal Database. [URL](#)

²¹ See, for example, *The Environmental Law Initiative v Minister for Oceans and Fisheries [2022] NZHC 2969*. Biodiversity Legal Database. [URL](#); *The Environmental Law Initiative v Minister for Oceans and Fisheries [2025] NZHC 177*. Biodiversity Legal Database. [URL](#); *WWF South Africa v Minister of Agriculture, Forestry and Fisheries and Others (11478/18) [2018] ZAWCHC 127*; *[2018] 4 All SA 889 (WCC)*; *2019 (2) SA 403 (WCC)*. Biodiversity Legal Database. [URL](#)

²² The Conseil d'État is the highest administrative jurisdiction body in France. It hears appeals and appeals on points of law concerning acts and/or decisions of public authorities and officials alleged to be contrary to domestic legislation.

²³ Conseil d'État, Décision no 449788, ECLI:FR:CECHR:2023:449788.20230320. [URL](#)

²⁴ For example, from Russian case law see Постановление Верховного Суда Российской Федерации от 17.12.2025 № 20-АД25-2-К5 (Decision of the Supreme Court of the Russian Federation of 17 December 2025, No. 20-AD25-2-K5); Определение Судебной коллегии по уголовным делам Верховного Суда Российской Федерации от 05.12.2024 № 58-УДП24-17-К9 (Determination of the Judicial Chamber for Criminal Cases of the Supreme Court of the Russian Federation of 5 December 2024, No. 58-UDP24-17-K9); Приговор Ужурского районного суда № 1-137/2024 от 19.06.2025 по делу № 1-16/2025. (Judgment of the Uzhur District Court of 19 June 2025, No. 1-137/2024, Case No. 1-16/2025). [URL](#); Апелляционное постановление Амурского областного суда № 22-1338/2021 от 14.07.2021 по делу № 1-201/2021 (Appeals Decision of the Amur Regional Court of 14 July 2021, No. 22-1338/2021, Case No. 1-201/2021). [URL](#)

²⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora, 3 March 1973 (entered into force for the Russian Federation (USSR) on 8 December 1976).

²⁶ *Correctionele rechtbank*. Gent, 27 juni 2014, para 191. [URL](#); *CITES welcomes Belgian court judgement on illegal trade in birds of prey*. (2022). CITES. [URL](#)

endangered species had reached a scale comparable to cross-border trafficking in drugs or weapons.²⁷

1.2. Biodiversity Protection in Human Rights Cases

24. A human-rights-based category of litigation has gained momentum over the past decade.²⁸ Here biodiversity is treated as an essential component of, and a condition for the effective enjoyment of, the human right to a clean, healthy and sustainable environment.²⁹
25. Such cases are usually initiated by private applicants, whether individuals or civil-society organizations. The Philippine case *Minors Oposa v. Secretary of the Department of Environment and Natural Resources* opened the way for this type of litigation.³⁰ Minors sought the cancellation of existing timber license agreements and an injunction restraining the further receipt, acceptance, processing, renewal, or approval of such agreements. They argued that the activities conducted under the licenses caused deforestation, harmed public welfare and environmental sustainability, and violated their right to a balanced and healthful ecology. The Supreme Court of the Philippines recognized the infringement of that right and explained that wildlife conservation formed part of the right to a balanced and healthful ecology. Because the petitioners also asked on behalf of future generations, the Court stated that the right concerned the “rhythm and harmony of nature”, thereby requiring the use, management, renewal, and conservation of natural resources to be equitably accessible to present and future generations.
26. In Costa Rica, acting in *amparo* proceedings,³¹ the Supreme Court held unlawful a public authority resolution permitting the felling and use of the rare tropical tree *Dipteryx panamensis*, because the activity harmed both that species and the endangered great green

²⁷ *Correctiebank*, Gent, 27 June 2014, para. 191. [URL](#)

²⁸ This category of case law remains underdeveloped in the Russian Federation. One reason is that, rather than applying Article 42 of the Constitution—the right to a favourable environment—directly, courts tend to proceed immediately to environmental legislation imposing duties on every person, including public authorities, to treat natural resources with care and preserve nature. See, for example, Определение Восьмого кассационного суда общей юрисдикции от 24.03.2026 № 88-5728/2026 (Decision of the Eighth General Jurisdiction Court of Cassation of 24 March 2026, No. 88-5728/2026; Кассационное определение Третьего кассационного суда общей юрисдикции от 12.11.2025 № 88а-18510/2025 (Decision of the Third General Jurisdiction Court of Cassation of 12 November 2025, No. 88а-18510/2025). There are nevertheless cases in which a prosecutor, acting to protect the rights and interests of an indeterminate group, relies on Article 42 of the Constitution of the Russian Federation. The most recent case concerned the failure of the Ministry of Natural Resources and Environmental Protection of the Komi Republic and the Federal Forestry Agency to arrange for forest management. The prosecutor argued that this omission could result in the loss of forests as public property of the Russian Federation, biodiversity loss, less efficient forest use, and consequently an infringement of citizens’ right to a favourable environment. See Кассационное определение Третьего кассационного суда общей юрисдикции от 12.11.2025 № 88а-18510/2025 (Decision of the Third General Jurisdiction Court of Cassation of 12 November 2025, No. 88а-18510/2025).

²⁹ The term “right to a clean, healthy and sustainable environment” is used in UN General Assembly Resolution 76/300 and the ICJ’s 2025 advisory opinion. See UNGA. Resolution adopted by the General Assembly on 28 July 2022 “The human right to a clean, healthy and sustainable environment”. A/RES/76/300. [URL](#); ICJ Climate Change Advisory Opinion, paras 387–393. Though this term is not uniform and universally approved: national laws variously refer to a right to a healthy, clean, or favourable environment, and the scope and content of the right differ between domestic legal systems.

³⁰ *Minors Oposa et al. v. Secretary of the Department of Environment and Natural Resources*. Biodiversity Legal Database. [URL](#)

³¹ Amparo is a special procedure within the Latin American model of constitutional review. It protects individual rights and freedoms by permitting challenges not only to normative legal acts, but also to decisions, actions, and omissions of public authorities. It comprises additional mechanisms allowing special claims concerning, for example, liberty or personal integrity, unconstitutional judicial decisions, and unconstitutional administrative acts, decisions, conduct, and omissions. See Hoyos, G.H. (2023). *The Amparo Context in Latin American Jurisdiction: An Approach to an Empowering Action*. GlobaLex. [URL](#); Brewer-Carías, A.R. (2009). *Constitutional Protection of Human Rights in Latin America: A Comparative Study of Amparo Proceedings*. Cambridge University Press; Amparo (*Appeal for constitutional protection of fundamental rights*). Constitutional Court of Spain. [URL](#); Miguel, C.R. (2017). *Concept, genèse et évolution de l’amparo: le modèle espagnole*. Cahiers de la recherche sur les droits fondamentaux, 15 | 2017. [URL](#)

macaw (*Ara ambiguus*), which depends on it, and violated the human right to a healthy environment.³² *Amparo* cases provide a particularly clear example of biodiversity protection through human-rights litigation. They examine claims that acts and decisions of public authorities have violated citizens' constitutional rights and freedoms where other local remedies have been exhausted.

1.3. "Private-law" Biodiversity Litigation³³

27. Claims for compensation for environmental damage caused by companies' economic activity are a familiar feature of national case law.³⁴ Some jurisdictions even prescribe statutory rates for calculating such damage.³⁵ For example, the Constitutional Court of the Russian Federation has explained that the distinctive features of harm to the environment – and to its components, including ecosystems and wildlife – do not permit a fully objective valuation and therefore require a "special, notional method of determining its amount", reflected in the use of prescribed rates and methodologies.³⁶
28. Applicants in these cases may be individuals and their associations or public authorities, represented by a prosecutor or another body responsible for environmental oversight and enforcement. The proceedings concerning PJSC NTEC and the emergency diesel oil spill at Norilsk, for example, were initiated by the Yenisei Interregional Directorate of the Federal Service for Supervision of Natural Resources. The Commercial Court of the Krasnoyarsk Territory identified several distinctive features of environmental damage: the causal link between an adverse environmental impact and the resulting harm may not be readily apparent; restitution in kind may be difficult or impossible; and natural objects have no

³² Sentencia nº 13426 de Sala Constitucional de la Corte Suprema de Justicia, de 2 de Septiembre de 2008. 07-012530-0007-CO.
[URL](#)

³³ The section title is a term of convenience. Legal persons are the defendants in these disputes, the damage arises from their economic activity, and the proceedings concern pecuniary liability. The applicable law varies and is by no means confined exclusively to civil law. These cases may also impose liability on individuals, but the present paper focuses on corporate liability.

³⁴ Such disputes frequently also contain administrative or criminal responsibility claims for the unlawful extraction, use, or transfer of particular natural resources where harm to natural components is an aggravating element of an offence.

³⁵ For example, under Article 56 of Federal Law No. 52-FZ of 24 April 1995 "On Wildlife", legal persons and individuals in the Russian Federation that cause harm to wildlife or its habitats must provide compensation voluntarily or by court order in accordance with statutory rates and methodologies for calculating wildlife damage. The relevant instruments include: Приказ Минприроды России от 28.04.2008 № 107 «Об утверждении Методики исчисления размера вреда, причиненного объектам животного мира, занесенным в Красную книгу Российской Федерации, а также иным объектам животного мира, не относящимся к объектам охоты и рыболовства и среде их обитания» (Russian Ministry of Natural Resources and Environment Order No. 107 of 28 April 2008 "Approving the Methodology for Calculating Damage Caused to Wildlife Species Listed in the Red Book of the Russian Federation, Other Wildlife Species Not Classified as Game or Fisheries Resources, and Their Habitats"), Приказ Минприроды России от 08.12.2011 № 948 «Об утверждении Методики исчисления размера вреда, причиненного охотничьим ресурсам» (Russian Ministry of Natural Resources and Environment Order No. 948 of 8 December 2011 "Approving the Methodology for Calculating Damage Caused to Game Resources"). Where no suitable methodology exists, compensation is calculated by reference to the actual cost of remedying the damage to wildlife and its habitats, together with consequential loss, including loss of profit.

³⁶ Постановление Конституционного Суда Российской Федерации от 02.06.2015 № 12-П «По делу о проверке конституционности части 2 статьи 99, части 2 статьи 100 Лесного кодекса Российской Федерации и положений постановления Правительства Российской Федерации «Об исчислении размера вреда, причиненного лесам вследствие нарушения лесного законодательства» в связи с жалобой общества с ограниченной ответственностью "Заполярнефть", п. 3.3 (Judgment of the Constitutional Court of the Russian Federation of 2 June 2015, No. 12-P, "On the Constitutionality of Article 99(2) and Article 100(2) of the Forest Code of the Russian Federation and Provisions of the Government Resolution 'On Calculating the Amount of Damage Caused to Forests by Violations of Forestry Legislation', following a Complaint by LLC Zapolyarneft"), para. 3.3. [URL](#)

predetermined price. Those characteristics mean that the amount of environmental damage is determined on a notional basis.³⁷

29. The oil spill spread beyond the industrial site into the surrounding soil and water objects – the Bezmyanny stream, the Daldykan and Ambarnaya Rivers, Lake Pyasino, and the Pyasina River – polluting the soil and water and destroying the fertile topsoil. Partially satisfying the claim, the court ordered PJSC NTEC to pay RUB 146,177,467,227 in compensation for environmental damage.
30. In France, the civil-society organizations Sherpa and Les Amis de la Terre brought protracted proceedings against the multinational oil and gas company Perenco SA, seeking to hold it responsible for pollution and damage to natural resources caused by its activities in the Democratic Republic of the Congo. The litigation remains pending. The applicants' latest success was receiving authorization to inspect Perenco Group's internal documents in order to establish causation and the institutional control exercised by Perenco SA, headquartered in France, over its subsidiary and other companies operating in the Congo. The inspection is intended to provide the basis for a future claim for environmental damage. The French Court of Cassation ordered Perenco SA to disclose information, authorized the applicants to inspect internal documentation, and confirmed that the organizations had standing in the dispute.³⁸
31. Alongside claims for compensation for environmental damage caused by particular economic activities, cases seeking to hold companies responsible for failures to comply with the due diligence standard have gradually begun to emerge.³⁹
32. One current example is the litigation in France against the mass-market retailer group Casino.⁴⁰ A number of non-governmental organizations allege that Casino has failed to comply with France's legislation on duty of vigilance⁴¹ which requires companies to publish vigilance plans containing risk maps and preventive measures designed to avert human-rights violations and environmental damage, and to implement those measures. The alleged harm includes degradation of ecosystems, biodiversity loss, and soil and water pollution in Brazil and Colombia as a result of the company's cattle-ranching operations.
33. Following the adoption in 2024 of the European Union's Corporate Sustainability Due Diligence Directive⁴² and assuming its successful transposition into the legal systems of the EU Member States, the number of corporate due diligence cases concerning preventive biodiversity conservation measures may increase. The Directive expressly requires companies'

³⁷ Решение Арбитражного суда Красноярского края от 12 февраля 2021 года по делу № А33-27273/2020 (Judgment of the Commercial Court of the Krasnoyarsk Territory of 12 February 2021, Case No. A33-27273/2020), pp. 21 and 37. [URL](#)

³⁸ Cour de cassation, civile, Chambre civile 1, 9 March 2022, 20-22.444. [URL](#). For further reading see *Sherpa and Les Amis de la Terre France v. Perenco SA*. Business and Human Rights Law. [URL](#); *Victory over the Transnational Corporation Perenco: A Step Forward in the Fight against Opacity and for Access to Justice*. Les Amis de la Terre France. [URL](#)

³⁹ The Russian Federation has no legislation imposing a due diligence standard on private actors. The case law focuses principally on duties to undertake restoration measures and compensate for damage to biological resources and ecosystems. See, for example, Определение Верховного Суда Российской Федерации от 11.02.2025 по делу № 53-КГ24-12-К8 (Determination of the Supreme Court of the Russian Federation of 11 February 2025, Case No. 53-KG24-12-K8). [URL](#); Постановление Конституционного Суда Российской Федерации от 30.03.2018 № 14-П (Judgment of the Constitutional Court of the Russian Federation of 30 March 2018, No. 14-P). [URL](#); Определение Верховного Суда Российской Федерации от 13.06.2019 по делу № 307-ЭС19-2293 (Determination of the Supreme Court of the Russian Federation of 13 June 2019, Case No. 307-ES19-2293). [URL](#)

⁴⁰ *Assignment devant le Tribunal Judiciaire de Saint-Étienne*. (2021). [URL](#)

⁴¹ Loi no 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (1). JORF no 0074 du 28 mars 2017. [URL](#)

⁴² Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. OJ L, 2024/1760, 5.7.2024. [URL](#)

risk assessments, reporting, and harm-prevention measures to address adverse impacts on biodiversity (in the light of obligations under the CBD as well as the Cartagena⁴³ and Nagoya Protocols⁴⁴).⁴⁵

1.4. Rights of Nature before National Courts

34. Latin American States were the first to recognize nature and its individual components as subjects of rights, by initially introducing such provisions in legislation – including constitutional provisions⁴⁶ – and subsequently through the jurisprudence.
35. In Colombia, individuals brought an action in 2020 against the President of the Republic, the Ministry of Environment and Sustainable Development, and several other public authorities and officials. They asked the court to recognize Isla de Salamanca National Park as a subject of rights, require the respondents to develop short-, medium-, and long-term plans to combat deforestation, and order measures to restore areas damaged by forest fires.⁴⁷ The Supreme Court satisfied the claims.
36. In 2019, in proceedings concerning the annulment of mining concessions in the Los Cedros Protected Forest, Ecuador's Constitutional Court recognized that nature has intrinsic value and can no longer be regarded solely as an object to be exploited by humankind in pursuit of economic ends.⁴⁸
37. Nature is accordingly conferred rights that are judicially enforceable and give rise to corresponding duties on the part of public authorities to respect and protect nature and to take its rights into account in decision-making.⁴⁹ The Constitutional Court observed that a violation of the rights of nature resulting in the extinction of species could be compared to genocide in the human-rights context.⁵⁰ Like human beings, nature possesses rights such as the right to water, for example. This is because water resources are indispensable not only to sustain human life, but also to maintain the “life cycles of nature” as an integrated, renewable, and self-sustaining system.⁵¹
38. The Superior Court of Justice of Brazil likewise compared the legal status of nature and human beings in the context of dignity in a case concerning the keeping of a parrot.⁵² Responding to the applicant's request to retain possession of the parrot until the competent authorities could provide suitable conditions for the bird, the reporting judge proposed extending the concept of dignity, and the prohibition on treating beings merely as objects, to natural resources and

⁴³ Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 29 January 2000 (the Russian Federation not a party).

⁴⁴ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, 29 October 2010 (the Russian Federation not a party).

⁴⁵ Directive (EU) 2024/1760, recital 32 and Annex, Part II(1). [URL](#)

⁴⁶ A selection of legislation recognizing legal personality, legal capacity, or rights for nature can be found in the *Rights of Nature Law Library*. Center for Democratic and Environmental Rights. [URL](#)

⁴⁷ Sentencia de Corte Suprema de Justicia. STC3872-2020. Radicación no 08001-22-13-000-2019-00505-01. [URL](#)

⁴⁸ Case No. 1149-19-JP/20. Constitutional Court of Ecuador, paras 42–43. [URL](#). For further reading see Tănăsescu, M., Macpherson, E., Jefferson, D. et al. (2024). *Rights of Nature and Rivers in Ecuador's Constitutional Court*. The International Journal of Human Rights. [URL](#)

⁴⁹ Case No. 1149-19-JP/20. Constitutional Court of Ecuador, paras 133–138.

⁵⁰ Ibid., para. 68.

⁵¹ Ibid., paras 210–217 and 337–338.

⁵² Special Appeal No. 1,797,175 - SP (2018/0031230-0). Superior Court of Justice of Brazil. [URL](#)

animals. The other judges endorsed that proposal. Considerations of “dignity” and the concept of “victims” have also appeared in other cases concerning the protection of animals from cruel treatment, including treatment incompatible with their protected status.⁵³

39. Among European jurisdictions, Germany embraced a similar move towards recognizing rights held by nature in litigation arising from the “Volkswagen emissions scandal”⁵⁴. Interpreting Articles 2(1), 3, and 37 of the Charter of Fundamental Rights of the European Union, the Erfurt Regional Court concluded that the Charter provided a legal basis for recognizing and protecting rights of nature and of distinct ecosystems.⁵⁵ In its view, the rights of such “ecological persons” (*ökologische Personen*) include rights to respect for and protection of their existence and to the restoration of their life cycles, structure, functions, and evolutionary processes.⁵⁶
40. Even where nature and/or its components are not recognized as possessing full legal personality, courts sometimes create procedural means of protecting nature resembling public interest actions. In the Philippines, for example, a group of lawyers acted on behalf of marine mammals to challenge licenses for oil and gas exploration in the Tañon Strait. Without formally recognizing that the animals themselves held rights, the Supreme Court confirmed that citizens could act to protect nature and its components through a *writ of kalikasan*.⁵⁷

⁵³ See, for example, Asociación de Funcionarios y Abogados por los Derechos de los Animales y Otros contra GCBA sobre Amparo. Decision of 21 October 2015. [URL](#); Ledesma, Diego Alberto sobre 1 - Ley de Protección al Animal. Malos Tratos o Actos de Crueldad. 6 de julio de 2022. IPP 149744/2022-0. [URL](#)

⁵⁴ The “Volkswagen emissions scandal” began in 2015, when it emerged that certain car manufacturers – including Volkswagen, Mercedes-Benz, and Audi – had installed software in vehicles that understated nitrogen-oxide emissions from diesel engines. The manipulation of emissions-compliance testing led to numerous claims against the manufacturers.

⁵⁵ Schadensersatzbestimmung unter Berücksichtigung eines Grundrechtsschutzes für ökologische Personen, Urteil. 2 August 2024. 8 O 1373/21, paras 26–28. [URL](#)

⁵⁶ Ibid. See also Haake, C. (2024). *Pioniertat oder Bärendienst? Das LG Erfurt über EU-Grundrechte für die Natur*. Verfassungsblog. [URL](#); Place, L. (2025). *The Erfurt Verdicts: A Step toward the Recognition of the Rights of Nature in Europe*. GARN Europe. [URL](#)

⁵⁷ A *writ of kalikasan* enables citizens to bring proceedings to protect nature and its components without proving a direct personal interest, such as victim status, individual damage, or another procedural interest normally required for standing. *Resident Marine Mammals of the Protected Seascape Tañon Strait and Central Visayas Fisherfolk Development Center et al. v. Secretary Angelo Reyes et al.* Biodiversity Legal Database. [URL](#)

II. International Adjudication Practice on Biodiversity

41. To date, relatively few cases before international courts and tribunals at the universal level have directly concerned States' obligations to conserve biodiversity. The most illustrative inter-State case in this field is the ICJ's *Whaling in the Antarctic*.⁵⁸ It concerned Japan's grant of special permits to kill, take, and treat whales under JARPA II and whether those permits were granted "for purposes of scientific research".
42. Although the case directly concerned international obligations to conserve particular species and the applicable law was the International Convention for the Regulation of Whaling (ICRW),⁵⁹ the questions before the Court were narrowly framed. The Court therefore made few findings capable of application beyond those questions and the operation of the Convention (see **paras 49-51 below**).
43. International courts and tribunals have nevertheless addressed species and ecosystem conservation indirectly in environmental cases and related disputes concerning the exploitation of natural resources. One example is the arbitration between the European Union and the United Kingdom in *UK–Sandeel*.⁶⁰ Among other matters, the tribunal examined whether the prohibition of commercial sandeel fishing in North Sea waters had an adequate scientific basis, given that the measure sought to maintain the marine ecosystem and the food-web species dependent on sandeel in a favourable condition.⁶¹
44. The sections below present several categories of cases decided by different international courts and tribunals and highlight findings concerning States' international legal obligations that are significant for biodiversity protection. The survey is not exhaustive; its purpose is to illustrate how biodiversity issues have arisen before the best-known inter-State dispute-settlement bodies.

2. International Court of Justice

45. Of the relatively small number of environmental disputes referred to the ICJ, only some judgments are potentially applicable to biodiversity conservation. In several cases in which the parties expressly invoked provisions of the CBD, the Court ultimately made no determination concerning the obligations arising under it.⁶²
46. Particularly important are the Court's findings that States have a customary obligation to conduct an environmental impact assessment (EIA). In *Pulp Mills* and *Certain Activities Carried Out by Nicaragua in the Border Area / Construction of a Road in Costa Rica along the San Juan River*, the ICJ consistently confirmed that general international law requires an EIA before a

⁵⁸ ICJ. *Whaling in the Antarctic* (Australia v. Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014, p. 226, para. 46. [URL](#)

⁵⁹ International Convention for the Regulation of Whaling, 2 December 1946 (entered into force for the Russian Federation (USSR) on 10 November 1948).

⁶⁰ PCA. Ruling of 28 April 2025. PCA Case No. 2024-45 in the matter of an arbitration pursuant to article 739 of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland. [URL](#)

⁶¹ Paragraphs 474–593 of the Ruling (pp. 171–211) interpret the obligation to base fisheries-management measures on the "best available scientific advice".

⁶² The cases are: ICJ. *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p. 7. [URL](#); ICJ. *Pulp Mills on the River Uruguay* (*Argentina v. Uruguay*), Judgment, I.C.J. Reports 2010, p. 14 (**Pulp Mills**). [URL](#); ICJ. *Certain Activities Carried Out by Nicaragua in the Border Area* (*Costa Rica v. Nicaragua*) and *Construction of a Road in Costa Rica along the San Juan River* (*Nicaragua v. Costa Rica*), Judgment (**Certain Activities 2015**), I.C.J. Reports 2015, p. 665. [URL](#)

project is implemented where there is a risk that the proposed activity may have a significant adverse environmental impact in a transboundary context.⁶³ Environmental effects must also be monitored throughout the life of the project where necessary.⁶⁴

47. In the same cases, the Court recognized the customary character of the obligation to prevent significant transboundary environmental harm, which is also reflected in Article 3 of the CBD.⁶⁵ The obligation thus exists independently of the treaty regime and also binds States that are not Parties to the CBD.⁶⁶ It also means that implementation of Article 3 of the CBD may be supplemented by customary procedural and substantive obligations, including the requirement to conduct an EIA.
48. Compensation is one of the effective forms of reparation where the natural environment or its individual components have been damaged. At the compensation stage of *Certain Activities*, the ICJ explained that absence of adequate evidence concerning the extent of material damage does not necessarily preclude an award of compensation; in such circumstances, the Court may determine the amount on the basis of equitable considerations.⁶⁷ Compensation for environmental damage may cover both the impairment or loss of environmental goods and services and the costs incurred to restore the damaged environment.⁶⁸ In quantifying compensation in that case, the Court took the condition of biodiversity into account.
49. In *Whaling in the Antarctic*, the ICJ was asked whether Japan's grant of special permits to kill, take, and treat whales under JARPA II complied with the ICRW. On the evidence submitted by the Parties, the Court closely examined whether the programme involved scientific research and whether the permits were granted for its stated purposes. The Court identified several problems in the programme's design: Japan had not adequately considered the feasibility of non-lethal research methods; JARPA and JARPA II had markedly different sample sizes despite almost identical stated objectives; and the proposed sample sizes were disproportionate to the expected research benefits.⁶⁹ It also noted the divergence between the target sample sizes and the whales actually taken.⁷⁰ The Court ultimately held that, although JARPA II involved activities that could broadly be characterized as "scientific research", the evidence did not establish that the programme's design and implementation were reasonable in relation to its stated objectives. The permits were therefore not "for purposes of scientific research" within Article VIII(1) of the ICRW.⁷¹

⁶³ Pulp Mills, paras 204–205; *Certain Activities* 2015, paras 101–104.

⁶⁴ *Certain Activities* 2015, para. 161.

⁶⁵ Pulp Mills, paras 101 and 197.

⁶⁶ Young, M., Schomaker, A. (2026). *The ICJ Advisory Opinion on Climate Change: What It Means for the Convention on Biological Diversity*. EJIL:Talk! [URL](#)

⁶⁷ ICJ. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, para 35. [URL](#)

⁶⁸ *Ibid.*, paras 42–43.

⁶⁹ ICJ. *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, I.C.J. Reports 2014, p. 226, paras 150–153, 177–181, 193–198. [URL](#)

⁷⁰ *Ibid.*, paras 206–212.

⁷¹ *Ibid.*, paras 224–227.

50. The case is also notable for New Zealand's intervention under Article 63 of the Statute of the ICJ.⁷² New Zealand intervened in relation to the interpretation of Article VIII(1) of the ICRW, which permits States to issue special permits authorizing the killing, taking, and treating of whales for purposes of scientific research. New Zealand argued that the identification of a scientific-research programme and its purposes could not depend entirely on a State's unilateral discretion but had to be assessed based on objective criteria.⁷³ Although the Court did not formulate a general definition of "scientific research" or a list of criteria for identifying research purposes, it agreed that whether activities authorized by a special permit are for purposes of scientific research "cannot depend simply on that State's perception" and is subject to objective review.⁷⁴
51. When interpreting Japan's obligations under the ICRW, the Court also relied on non-binding resolutions of the International Whaling Commission.⁷⁵ The ability to have regard to such soft law instruments is particularly important for biodiversity conservation. The multilateral regime in this field is generally developed through decisions of treaty Conferences of the Parties and through policy frameworks; under the CBD, the Kunming–Montreal Global Biodiversity Framework is a prominent example.⁷⁶
52. Finally, the advisory opinion *Obligations of States in respect of Climate Change* is important for biodiversity because the Court emphasized the relationship between the climate change treaties and CBD and the complementarity of ecosystem conservation and adaptation measures.⁷⁷ The Court observed that restitution for breaches of climate obligations could include measures to restore damaged or destroyed ecosystems and biodiversity.⁷⁸

3. International Tribunal for the Law of the Sea

53. In interpreting States' obligations under Parts V, VII, and XII of the United Nations Convention on the Law of the Sea (**UNCLOS**),⁷⁹ ITLOS has on several occasions made findings relevant to biodiversity conservation.⁸⁰ In *Southern Bluefin Tuna*, when considering provisional measures, the Tribunal linked the conservation of the living resources of the sea with the protection and

⁷² Under Article 63 of the Statute, where the construction of a multilateral convention is in question, States Parties to that convention have a right to intervene and submit written and oral observations concerning its interpretation. See Statute of the International Court of Justice, art. 63. [URL](#); Rules of Court, art. 82–84 and 86. [URL](#)

⁷³ Declaration of Intervention of the Government of New Zealand. Whaling in the Antarctic (Australia v. Japan). 20 November 2012, paras 29–33. [URL](#); ICJ. Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, paras 13–14. [URL](#)

⁷⁴ ICJ. Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014, p. 226, para. 61.

⁷⁵ *Ibid.*, paras 46 and 137.

⁷⁶ In the climate change context, the ICJ made important findings on decisions of the Conference of the Parties to the United Nations Framework Convention on Climate Change serving as the meeting of the Parties to the Paris Agreement. See Nikitin, A., Solntsev, A., and Shmakova, A. (2026), *Advisory Opinions of the ICJ and IACtHR on States' Climate Obligations* (in Russian). International and Comparative Law Research Center. [URL](#)

⁷⁷ ICJ Climate Change Advisory Opinion, paras 127, 327, 330. See also Kosolapova, E. (2026). *What Does the International Court of Justice Advisory Opinion on Climate Change Mean for Multilateral Environmental Agreements?* IISD. [URL](#)

⁷⁸ ICJ Climate Change Advisory Opinion, para. 451.

⁷⁹ United Nations Convention on the Law of the Sea, 10 December 1982 (entered into force for the Russian Federation on 12 March 1997).

⁸⁰ In addition to the cases discussed below, prompt-release proceedings concerning vessels and crews under Article 292 of UNCLOS also contribute to strengthening the legal framework for biodiversity protection and the sustainable management of living resources. The provision applies where a foreign vessel and its crew are detained for violations of the coastal State's conservation and management rules in the exclusive economic zone (see art. 73 of UNCLOS).

preservation of the marine environment.⁸¹ It relied on this relationship when interpreting the terms “marine environment” and “ecosystem” in its advisory opinion of 21 May 2024,⁸² and when identifying the duty to have due regard to the rights and duties of other States in exercising sovereign rights to exploit living resources in the exclusive economic zone in its advisory opinion of 2 April 2015.⁸³

54. In *Southern Bluefin Tuna*, ITLOS also applied a precautionary approach to conservation measures. It stated that the parties “should in the circumstances act with prudence and caution to ensure that effective conservation measures are taken to prevent serious harm to the stock of southern bluefin tuna”.⁸⁴ Although there was scientific uncertainty concerning the measures required to conserve the stock, the Tribunal found that measures should be taken “as a matter of urgency” to avert its further deterioration.
55. In its advisory opinion of 2 April 2015, ITLOS repeatedly stated that, under Articles 61 and 62 of UNCLOS, the conservation of living resources in the exclusive economic zone is a primary responsibility of the coastal State. Fulfilling that responsibility requires States not only to adopt their own conservation measures, but also to regulate foreign vessels’ access to the zone and the conditions on which they may participate in the exploitation of its living resources.⁸⁵
56. In interpreting the obligations to conserve and manage living resources, ITLOS concluded that States must ensure that their activities and measures:
 - i. do not endanger shared stocks by over-exploitation;
 - ii. are based on the best scientific evidence available and, when such evidence is insufficient, apply the precautionary approach; and
 - iii. are designed to maintain or restore stocks at levels capable of producing the maximum sustainable yield, as qualified by relevant environmental and economic factors.⁸⁶
57. In addition to its findings concerning Articles 61 and 62 of UNCLOS, ITLOS concluded in its advisory opinion of 21 May 2024 that the obligation to protect and preserve the marine environment under Article 192 may, where the environment has been degraded, require the restoration of marine habitats and ecosystems.⁸⁷ That obligation is closely connected with Article 194(5), which requires measures necessary to protect and preserve “rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other

⁸¹ *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p. 28, para. 70. [URL](#). The dispute was not resolved on the merits because the arbitral tribunal held that it lacked jurisdiction. See *Southern Bluefin Tuna Case between Australia and Japan and between New Zealand and Japan*, Award on Jurisdiction and Admissibility. Decision of 4 August 2000. UNRIAA, Vol. XXIII, pp. 1–57.

⁸² ITLOS Climate Change Advisory Opinion, para. 169.

⁸³ ITLOS. Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4, para. 216.

⁸⁴ *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p. 28, paras 77–80.

⁸⁵ ITLOS Climate Change Advisory Opinion, paras 97–98, 104, and 106; *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, paras 212–213.

⁸⁶ ITLOS. Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission. Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4, paras 207–209; ITLOS Climate Change Advisory Opinion, paras 413–414.

⁸⁷ ITLOS Climate Change Advisory Opinion, paras 385–386 and 400.

forms of marine life”.⁸⁸ The Tribunal stated that the relevant characteristics of objects being protected by this Article must be assessed case by case, while definitions and classifications in the CBD and the Convention on International Trade in Endangered Species of Wild Fauna and Flora may provide guidance.⁸⁹

4. Inter-American Court of Human Rights

58. The case law of the IACtHR contains no judgment or advisory opinion where the issue presented was specifically devoted to biodiversity conservation. This is explained by the Court’s subject matter jurisdiction and the legal framework within which it operates.⁹⁰
59. The principal international instruments applied by the IACtHR are human rights treaties. This determines the subject matter and thematic scope of its judgments and advisory opinions. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (**Protocol of San Salvador**) was adopted in 1988.⁹¹ Its Article 11 recognizes the right to live in a healthy environment and requires States to promote the protection, preservation, and improvement of the environment.
60. The IACtHR has nevertheless considered biodiversity conservation indirectly, whether as an ancillary issue or as part of the evidence establishing environmental damage. These cases may broadly be grouped as follows:
- i. cases concerning the right to a healthy environment, through the interpretation and/or application of Article 11 of the Protocol of San Salvador;
 - ii. cases protecting Indigenous peoples’ rights to territory, natural resources, and consultation where a State decision may affect them; and
 - iii. cases recognizing legal personality or rights of nature and/or its individual components.
61. Cases protecting Indigenous peoples in the context of major economic projects – such as extractive activities in territories they occupy – often address both territorial and participatory rights as well as the right to a healthy environment under the Protocol of San Salvador. The categories identified above may therefore converge within a single case.
62. The IACtHR takes a multifaceted approach to the right to a healthy environment. Individuals are its primary beneficiaries, so the right entails State obligations to maintain nature in a condition conducive to human existence and development. The Court has also held, however, that the right protects not only human beings and their living conditions, but also components

⁸⁸ Ibid., paras 402–403.

⁸⁹ Ibid., para. 404.

⁹⁰ The IACtHR is an autonomous international court established by the American Convention on Human Rights. It is not institutionally part of any international organization, including the Organization of American States. It decides disputes and issues advisory opinions concerning compliance with, and interpretation of, the Convention. See American Convention on Human Rights “Pact of San José, Costa Rica”, 22 November 1969, Arts 33 and 64; Statute of the Inter-American Court of Human Rights, 31 October 1979, Art. 2. [URL](#)

⁹¹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, 17 November 1988. [URL](#)

of the environment “as legal interests in themselves”.⁹² This protection applies even in the absence of certainty or evidence concerning a risk to particular individuals.⁹³

63. The Court applied this idea in *La Oroya v. Peru*, emphasizing that States must protect nature not only because of its utility to human beings, but also because of its importance to the other living organisms with which the planet is shared.⁹⁴ Preventing air and water pollution, for example, is required not only because such pollution affects human health, but also because it may seriously impair flora and fauna.⁹⁵
64. The duty to prevent harm to species and ecosystems as components of the environment also requires States to prevent private actors from violating or impairing the right to a healthy environment, and to establish appropriate monitoring systems and legal mechanisms to prevent violations and protect rights that have been infringed.⁹⁶ More generally, the obligation of prevention is subject to the standard of due diligence and must be implemented in accordance with the precautionary principle.⁹⁷ Among other things, this requires States to regulate the prevention of environmental harm, supervise and monitor activities capable of adversely affecting components of the natural system, and require EIA.⁹⁸
65. Within the Organization of American States, a system of progress indicators has been developed to measure implementation of the Protocol of San Salvador. In cases based on that Protocol, the Court has noted that compliance with Article 11 must be assessed in the light of the condition of biodiversity.⁹⁹ In *Rama and Kriol*, it found a violation of the right to a healthy environment on the basis of soil degradation, biodiversity loss, and deforestation.¹⁰⁰
66. When finding violations of the right to a healthy environment, the Court rarely orders States to take specific measures concerning biodiversity. In *La Oroya v. Peru*, however, it required Peru to prepare a plan for ecosystem restoration and compensation for environmental damage aimed at achieving zero net loss of biodiversity or, at a minimum, a net neutral balance.¹⁰¹ The

⁹² IACtHR. The Environment and Human Rights. Advisory Opinion OC-23/17 of 15 November 2017 requested by the Republic of Colombia, paras 62–64; IACtHR. Caso Pueblo Indígena U'wa Y Sus Miembros vs. Colombia. Sentencia de 4 de Julio de 2024, para. 291; IACtHR. Case of the Rama and Kriol Peoples, Black Creole Indigenous Community of Bluefields and Others vs. Nicaragua. Judgment of April 1, 2024 (**Rama and Kriol**), paras 409–410; IACtHR Climate Change Advisory Opinion, paras 273–274.

⁹³ IACtHR. The Environment and Human Rights. Advisory Opinion OC-23/17 of 15 November 2017 requested by the Republic of Colombia, paras 62–64.

⁹⁴ IACtHR, Case of the Inhabitants of La Oroya v. Peru. Judgment of 27 November 2023 (**La Oroya**), para. 118; U'wa, para. 291. The Constitutional Court of Ecuador placed particular emphasis on the same proposition in Case No. 1149-19-JP/20, describing a shift in the legal paradigm from an anthropocentric to an ecocentric approach and observing that natural resources can no longer be regarded solely as objects of unlimited exploitation. Case No. 1149-19-JP/20. Constitutional Court of Ecuador, paras 51–53.

⁹⁵ *La Oroya*, para. 119.

⁹⁶ IACtHR. Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Judgment of 6 February 2020 (**Lhaka Honhat**), para. 207; U'wa, paras 293–294.

⁹⁷ Lhaka Honhat, para. 208; IACtHR. Caso Pueblos Indígenas Tagaeri Y Taromenane vs. Ecuador. Sentencia de 4 de Septiembre de 2024, paras 270–271; Rama and Kriol, paras 414–416.

⁹⁸ *Ibid.*

⁹⁹ IACtHR. The Environment and Human Rights. Advisory Opinion OC-23/17 of 15 November 2017 requested by the Republic of Colombia, para. 60. The indicators for Article 11 include the condition of biodiversity and the existence of public programmes and policies in this field. See OAS. Progress Indicators for Measuring Rights under the Protocol of San Salvador (2015). Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador. OEA/Ser.D/XXVI.11. Pp. 100, 103–104. [URL](#)

¹⁰⁰ Rama and Kriol, paras 435–443.

¹⁰¹ “Zero net loss of biodiversity” is a stringent standard requiring a sequence of measures to avoid and minimise harm, restore damaged natural components, and compensate residual damage. The aim is to ensure that the ultimate condition of an ecosystem or species is no worse than before the economic activity took place. “Net neutral balance” generally describes the same outcome – balancing losses and gains through restoration or offsets – but does not prescribe particular steps or methodologies.

plan was also required to include an environmental equivalence analysis based on ecosystem services – that is, the identification of substitute ecosystems providing the same types and levels of ecosystem services as the damaged ecosystem.¹⁰²

67. The IACtHR has reached similar conclusions on States' duty to prevent significant environmental harm and to conduct an EIA (**para. 64 above**) in its case law concerning Indigenous peoples' rights in the context of major economic projects within their territories.
68. An EIA is an essential element of Indigenous peoples' right to be consulted before adopting decisions that affect them. Such assessment must include findings concerning biodiversity and ecosystems.¹⁰³
69. The role of Indigenous peoples and their traditional knowledge in conserving biodiversity must likewise be taken into account. Based on the CBD's Akwé: Kon Voluntary Guidelines¹⁰⁴ and Article 8 of the CBD, the IACtHR stated that States are required to involve Indigenous peoples actively in the EIA.¹⁰⁵
70. Indigenous peoples are among the groups particularly vulnerable to environmental degradation and global changes in the natural system. Environmental policies may sometimes restrict their rights, creating the appearance of a conflict between Indigenous rights and nature conservation that requires group and public interests to be balanced. In *Kaliña and Lokono*, the IACtHR examined the proportionality of restrictions on Indigenous peoples' use of natural resources arising from the creation of nature reserves. It concluded that Indigenous peoples and their traditional knowledge can substantially enhance the effectiveness of State environmental policy. The protection of their rights and the implementation of conservation measures should therefore be seen as complementary rather than mutually exclusive.¹⁰⁶
71. A new direction of IACtHR jurisprudence has recently emerged that may also affect biodiversity: the recognition of nature as a subject of rights.¹⁰⁷ The Court has explained that this approach seeks not only to facilitate judicial protection of nature, but also to transform the understanding of natural resources as objects of exploitation.¹⁰⁸ In its view, the concept is not novel within the inter-American legal system, but rather a contemporary interpretation and manifestation of the principle that human rights and nature are interdependent.¹⁰⁹

5. Dispute Settlement Body of the World Trade Organization

72. States' trade and environmental policies regularly overlap and come into tension. Such overlaps have become increasingly visible since the 1970s as multilateral negotiations on conservation of particular components of the environment have intensified. It is therefore

¹⁰² La Oroya, paras 350–351.

¹⁰³ Rama and Kriol, paras 457–458.

¹⁰⁴ Secretariat of the Convention on Biological Diversity. (2004). *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or Which Are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*. [URL](#)

¹⁰⁵ Rama and Kriol, paras 270–271.

¹⁰⁶ IACtHR. Case of the Kaliña and Lokono Peoples v. Suriname. Judgment of 25 November 2015, paras 171–181.

¹⁰⁷ See **Part I.1.4**.

¹⁰⁸ IACtHR Climate Change Advisory Opinion, paras 279–281 and 316.

¹⁰⁹ *Ibid.*, paras 283 and 315.

unsurprising that the case law of the WTO DSB contains disputes directly or indirectly connected with environmental protection.¹¹⁰

73. In terms of biodiversity conservation, WTO DSB practice may broadly be considered in two respects:
- i. trade-restrictive measures necessary to protect human, animal, or plant life or health, or otherwise falling within the general exceptions under Article XX of the General Agreement on Tariffs and Trade (**GATT**);¹¹¹ and
 - ii. quarantine and other measures governed by the Agreement on the Application of Sanitary and Phytosanitary Measures (**SPS Agreement**).¹¹²
74. The best-known species-related case concerning the general exceptions is *United States—Import Prohibition of Certain Shrimp and Shrimp Products*. In interpreting Article XX(g) of GATT, the Appellate Body made the important finding that “renewable” and “exhaustible” resources are not mutually exclusive concepts: living resources are just as susceptible to depletion, and species may become extinct despite their reproductive capacity.¹¹³ “Natural resources” is an evolutionary concept; in view of the development of international law through new treaty regimes for the protection of living natural resources, Article XX(g) encompasses both living and non-living resources, including particular animal species.¹¹⁴
75. The Appellate Body emphasized that environmental concerns were reflected in the 1994 Marrakesh Agreement Establishing the World Trade Organization¹¹⁵ and recognized that environmental measures may be legitimate and consistent with the objectives of GATT even where they restrict international trade. Noting the textual amendments made to the preamble of the Marrakesh Agreement as compared with GATT 1947,¹¹⁶ it concluded that WTO Members had acknowledged the need to allow for the “optimal use of the world’s resources in accordance with the objective of sustainable development”.¹¹⁷
76. The Appellate Body endorsed the Panel’s view that, for the effective conservation of particular species, unilateral State measures – even where they pursue an environmental objective –

¹¹⁰ A selection is available on the WTO website. See *Environmental disputes in GATT/WTO*. (2026). World Trade Organization. [URL](#)

¹¹¹ General Agreement on Tariffs and Trade, 30 October 1947 (entered into force for the Russian Federation on 22 August 2012 upon the entry into force for it of the Marrakesh Agreement Establishing the World Trade Organization).

¹¹² Agreement on the Application of Sanitary and Phytosanitary Measures, 15 April 1994 (entered into force for the Russian Federation on 22 August 2012 upon the entry into force for it of the Marrakesh Agreement Establishing the World Trade Organization).

¹¹³ WTO. *United States – Import Prohibition of Certain Shrimp and Shrimp Products*. Report of the Appellate Body, 12 October 1998. WT/DS58/AB/R, paras 128, 132–134. [URL](#)

¹¹⁴ *Ibid.*, paras 130–131.

¹¹⁵ *Ibid.*, para. 129.

¹¹⁶ Much of the second recital of the preamble to the Marrakesh Agreement Establishing the World Trade Organization was drawn from GATT 1947. The Appellate Body noted, however, that the earlier reference to the “full use of the resources of the world” was replaced by language reflecting the international community’s understanding in 1994: “allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development”, while seeking to protect and preserve the environment.

¹¹⁷ WTO. *United States – Import Prohibition of Certain Shrimp and Shrimp Products*. Report of the Appellate Body, 12 October 1998. WT/DS58/AB/R, paras 152–153. [URL](#)

are less desirable than multilateral negotiations and the implementation of agreed and coordinated measures.¹¹⁸

77. In *United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, the protection of a particular species — dolphins — was recognized as a legitimate aim capable of justifying additional technical regulations and standards for imported goods,¹¹⁹ provided that the other requirements of Article 2.2 of the Agreement on Technical Barriers to Trade were satisfied.¹²⁰
78. Another WTO DSB species-related dispute concerned seals. In *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, the Panel made clear that the objectives pursued by the European Union through Regulations No 1007/2009 and 737/2010 and through an import ban on seal products were not the conservation of seals as such, but a response to public concern about the inhumane methods used to kill seals and produce seal products.¹²¹ This objective was nevertheless recognized as legitimate under Article XX(a) of GATT, which concerns measures necessary to protect public morals.¹²²
79. Disputes concerning sanitary and related measures often focus not on the condition of species and ecosystems, but on the protection of human health.¹²³ The SPS Agreement itself places human health first in its hierarchy of protected interests (see, for example, its preamble and Articles 2.1 and 3.2). Nevertheless, the case law under the Agreement is important because it explains when a measure has an adequate scientific basis and what constitutes an appropriate risk assessment and risk-management process.¹²⁴ In *Australia—Measures Affecting Importation of Salmon*, for example, the Panel included biological consequences within the risk assessment required by Article 5.1 of the SPS Agreement.¹²⁵

¹¹⁸ Ibid., paras 171-172. WTO. *United States — Import Prohibition of Certain Shrimp and Shrimp Products*. Report of the Panel, 15 May 1998. WT/DS58/R, paras 7.61, 9.1. [URL](#); WTO. *United States — Import Prohibition of Certain Shrimp and Shrimp Products*. Recourse to article 21.5 by Malaysia. Report of the Panel, 15 June 2001. WT/DS58/RW, para. 5.67. [URL](#). The Appellate Body nevertheless confirmed that a State may adopt unilateral measures where good-faith efforts to reach a multilateral solution have reached an impasse. *United States — Import Prohibition of Certain Shrimp and Shrimp Products*. Recourse to article 21.5 by Malaysia. Report of the Appellate Body, 22 October 2001. WT/DS58/AB/RW, paras 122-134. [URL](#)

¹¹⁹ WTO. *United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*. Report of the Panel, 15 September 2011. WT/DS381/R, paras 7.436-7.443. [URL](#)

¹²⁰ Agreement on Technical Barriers to Trade, 15 April 1994 (entered into force for the Russian Federation on 22 August 2012 upon the entry into force for it of the Marrakesh Agreement Establishing the World Trade Organization).

¹²¹ WTO. *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*. Report of the Panel, 25 November 2013. WT/DS400/R, WT/DS401/R, para 7.640. [URL](#)

¹²² Ibid., paras 7.417-7.421, 7.636-7.639; WTO. *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*. Reports of the Appellate Body, 22 May 2014. WT/DS400/AB/R, WT/DS401/AB/R, paras 5.289-5.290. [URL](#)

¹²³ In *European Communities—Measures Concerning Meat and Meat Products (Hormones)*, for example, the Panel expressly limited the subject matter of the dispute to the protection of human health. See WTO. *European Communities — Measures Concerning Meat and Meat Products (Hormones)*. Report of the Panel, 18 August 1997. WT/DS26/R/USA, paras 8.19, 8.106. [URL](#); WTO. *European Communities — Measures Concerning Meat and Meat Products (Hormones)*. Report of the Panel, 18 August 1997. WT/DS48/R/CAN, para 8.22. [URL](#)

¹²⁴ In *European Communities—Measures Concerning Meat and Meat Products (Hormones)*, the Panel explained in detail how scientific information should be collected and analysed in a risk assessment. See WTO. *European Communities — Measures Concerning Meat and Meat Products (Hormones)*. Report of the Panel, 18 August 1997. WT/DS26/R/USA, paras 8.113-8.114, 8.117. [URL](#). Those findings were later applied in *Australia — Measures Affecting the Importation of Apples from New Zealand*. See WTO. *Australia — Measures Affecting the Importation of Apples from New Zealand*. Report of the Appellate Body, 29 November 2010. WT/DS367/AB/R, paras 219-220. [URL](#)

¹²⁵ WTO. *Australia — Measures Affecting Importation of Salmon*. Report of the Panel, 12 June 1998. WT/DS18/R, paras 8.69, 8.72. [URL](#)

80. The applicability of the CBD and the Cartagena Protocol on Biosafety arose directly in *European Communities—Measures Affecting the Approval and Marketing of Biotech Products*. The Panel declined to use those instruments in its interpretation because not all Parties to the dispute were Parties to the treaties.¹²⁶ It nevertheless accepted that measures intended to prevent harm to biodiversity could qualify under the SPS Agreement as measures designed to protect animal or plant life or health.¹²⁷

6. Court of Justice of the European Union

81. At EU level, biodiversity conservation is governed by a range of regulations and directives, some addressing broad questions and others narrowly defined procedures. The extensive case law based on those instruments is correspondingly fragmented. A classification based solely on subject matter would not be effective; the principal legal instruments and the measures challenged under them provide a more useful means of identifying the main types of litigation here.
82. The cases that contribute most to the development of general principles of EU biodiversity law are based on two key directives underpinning Natura 2000, the integrated network of protected areas.¹²⁸ These are Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora¹²⁹ and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds.¹³⁰
83. Proceedings under these Directives often concern States' procedural and substantive obligations to designate protected areas, set specific objectives and plans for species conservation, conduct impact assessments, and implement particular conservation measures. In Case C-47/23, the CJEU distinguished three categories of measure: conservation measures, preventive measures, and compensatory measures.¹³¹ It was among the first biodiversity cases in which the Court examined a Member State's structural failure to prevent habitat deterioration. The Court assessed environmental damage, inadequate practical action – including the absence of habitat monitoring – and gaps in the applicable legal framework.
84. Most cases before the CJEU are infringement proceedings brought by the European Commission against Member States for failure to fulfil obligations arising under EU measures or to align domestic law with those measures. Over the past ten to fifteen years, however, a substantial part of the Court's biodiversity jurisprudence has consisted of preliminary rulings:

¹²⁶ WTO. *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*. Reports of the Panel, 29 September 2006. WT/DS291/R, WT/DS292/R, WT/DS293/R, paras 7.74–7.75. [URL](#). A contrary conclusion could have enabled the WTO DSB to provide important guidance on the compatibility and interaction of the Cartagena Protocol and the SPS Agreement, including their procedural obligations. See Neff, R. (2005). *The Cartagena Protocol and the WTO: Will the EU Biotech Products Case Leave Room for the Protocol?* 16 *Fordham Envtl. L. Rev.* 261 (2005). [URL](#); Falkner, R. (2000). *Regulating biotech trade: the Cartagena Protocol on Biosafety*. *International Affairs* 76, 2 (2000), 299–313. [URL](#); Franken, L., Burchardi, J.-E. (2007). *Beyond Biosafety – An Analysis of the EC-Biotech Panel Report*. *Aussenwirtschaft*, 62. Jahrgang (2007). Heft I. Zürich: Rüegger, S. 77–106. [URL](#)

¹²⁷ WTO. *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*. Reports of the Panel, 29 September 2006. WT/DS291/R, WT/DS292/R, WT/DS293/R, para. 7.372. [URL](#)

¹²⁸ For further reading see *Natura 2000 sites designated under the EU Habitats and Birds Directives*. European Environment Agency. [URL](#)

¹²⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. OJ L 206 22.7.1992, p. 7. [URL](#)

¹³⁰ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. OJ L 20, 26.1.2010, pp. 7–25. [URL](#)

¹³¹ CJEU. Case C-47/23. Judgment of the Court, 14 November 2024, para. 84. [URL](#); Hildt, L. (2024) *Prohibiting Drivers of Biodiversity Loss. How the Court of Justice of the European Union provides further teeth to the Habitats Directive*. *VerfBlog*. [URL](#)

answers to questions referred by national judges where resolving a particular dispute requires an assessment of whether contested acts, omissions, or decisions comply with EU law.¹³²

85. In cases under the Directives identified above (**para. 82 above**), the Court has developed several key principles:
- i. Member States must formulate specific quantitative conservation objectives based on a scientific analysis of the condition of the species and habitat concerned.¹³³
 - ii. Conservation measures must correspond to the ecological requirements and condition of the particular species and habitat. They are not limited to mitigating or preventing adverse anthropogenic effects, but also include proactive measures to maintain and restore habitats.¹³⁴
 - iii. Any discretion afforded to Member States under the Directives remains bounded by one of the European Union's objectives: maintaining or restoring species at favourable conservation status.¹³⁵
 - iv. Under the precautionary principle, conservation measures must be adopted even in the absence of conclusive scientific evidence of potential risks; States may not wait until those risks become real and serious.¹³⁶
 - v. An assessment of a project's effects on habitats and species must contain complete, precise, and definitive findings and conclusions capable of removing all reasonable scientific doubt concerning its effects on the environment.¹³⁷
 - vi. Economic considerations cannot outweigh the public interest in conserving species and ecosystems and may not be treated as paramount when protected areas and conservation measures are determined.¹³⁸
86. Other types of CJEU case law likewise reflect the fragmented nature of the applicable rules and concern individual components of biodiversity. Fisheries cases and proceedings concerning compliance with quota systems intended to prevent the depletion of fish stocks are common.¹³⁹ A separate group of cases concerns environmental non-governmental organizations' participation in administrative decision-making procedures capable of adversely affecting the environment, under the Convention on Access to Information, Public

¹³² There have been no successful direct actions by natural or legal persons before the CJEU challenging EU biodiversity measures, such as undertaken under Directives 92/43/EEC and 2009/147/EC.

¹³³ CJEU. Case C-85/22. Judgment of the Court, 20 June 2024, paras 79–85. [URL](#)

¹³⁴ *Ibid.*, paras 135–136.

¹³⁵ CJEU. Case C-436/22. Judgment of the Court, 29 July 2024, paras 55–56. [URL](#). In this case, the Court explained that conservation status is favourable when: (1) population-dynamics data indicate that the species is maintaining itself on a long-term basis as a viable component of its natural habitat; (2) its natural range is neither being reduced nor likely to be reduced for the foreseeable future; and (3) there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis. *Ibid.*, paras 59–61.

¹³⁶ *Ibid.*, paras 72–74.

¹³⁷ CJEU. Case C-441/17. Judgment of the Court, 17 April 2018, para 114. [URL](#)

¹³⁸ CJEU. Case C-44/95. Judgment of the Court, 11 July 1996, paras 25, 29–30, 39–41. [URL](#)

¹³⁹ See, for example, the preliminary ruling concerning the legitimacy of emergency measures adopted by the European Commission to restrict catches of particular species for the sustainable and rational use of aquatic biological resources: CJEU. Case C-221/09. Judgment of the Court, 17 March 2011. [URL](#). In Case C-140/00, the Court stated that regulating the conservation of fish stocks requires not only legislation on access, quotas, and related matters, but also an effective administrative and judicial system for preventing and penalising infringements. CJEU. Case C-140/00. Judgment of the Court, 14 November 2002, paras 56–57. [URL](#)

Participation in Decision-making and Access to Justice in Environmental Matters (**Aarhus Convention**)¹⁴⁰.¹⁴¹ These decisions strengthen the role of citizens and their associations in environmental decision-making, including their access to justice – and thus judicial protection of natural components – and access to environmental information. Under Article 1 of the Aarhus Convention, this contributes to protecting the right of every person to live in an environment adequate to his or her health and well-being.

87. Because of the distinctive legal order of the European Union and the legal instruments that the CJEU may apply, its jurisprudence contains a large number of cases directly concerned with protecting biodiversity. This distinguishes it from the other international courts and tribunals discussed above and, to some extent, makes its practice resemble that of national courts. At the same time, its findings have legal significance not only for the Member State involved in a particular dispute, but for the Union as a whole, thereby shaping a uniform legal approach to addressing biodiversity loss effectively.

¹⁴⁰ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 25 June 1998 (Russian Federation not a party).

¹⁴¹ See, for example, CJEU. Case C-243/15. Judgment of the Court, 8 November 2016. [URL](#)

III. Biodiversity Loss Litigation – New Steps

88. As the analysis above shows, biodiversity receives judicial protection even though it is not the direct subject matter of the overwhelming majority of cases. This does not mean that the legal protection is inadequate or that recourse to the courts is ineffective in resolving biodiversity-related legal issues. Yet against the background of climate litigation, which is increasingly used to pursue global objectives, established biodiversity litigation may appear not to achieve comparable effects “on the ground”. What accounts for the difference?
89. One answer is climate litigation’s turn towards strategic litigation.¹⁴² No universally accepted definition of “strategic litigation” has emerged either in the practice of organizations that conduct it or in the literature. Its principal features can nevertheless be identified. The defining characteristic is an intention to produce an outcome or effect extending beyond the individual applicant and the particular case or legal conflict, to benefit a wider group or society as a whole.¹⁴³ That effect may take the form of legal change—for example, legislative reform, altered enforcement practice, or a new judicial precedent—or social change, such as transforming an established understanding of an issue, placing a new problem on the agenda, or drawing greater attention to an existing one.
90. Such effects may be pursued in different ways. They include framing the relief sought and the questions submitted to a court in particular terms, as well as filing several applications before different institutions – sometimes in different procedural forms, such as contentious proceedings and requests for advisory opinions – to build broad support for particular legal conclusions. Both techniques can be seen in the parallel requests made to five international courts and tribunals for advisory opinions on States’ climate obligations, together with an application to the European Court of Human Rights.¹⁴⁴ Notably, the proceedings were initiated by different applicants.
91. Strategic litigation may be brought by the persons directly concerned or take the form of a public-interest action (*actio popularis*) on behalf of an indeterminate group.¹⁴⁵ Common-law systems have a related tradition of public-interest litigation, in use since the middle of the twentieth century—*Brown v. Board of Education*¹⁴⁶ is the best-known example. The concept is associated primarily with the applicant’s objective and the broader effects of the outcome rather than with a particular procedural vehicle.¹⁴⁷ A case, or a coordinated group of cases, is therefore made strategic by the applicants’ aims and the intended result, not by its procedural form.

¹⁴² Strategic character of climate change litigation is highlighted in the litigation snapshots by The Grantham Research Institute on Climate Change and the Environment. See, for example, Setzer, J., Higham, C. (2025). *Global trends in climate change litigation: 2025 snapshot*. Grantham Research Institute on Climate Change and the Environment. [URL](#); Setzer, J., Higham, C. (2026). *Global trends in climate change litigation: 2026 snapshot*. Grantham Research Institute on Climate Change and the Environment. [URL](#)

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¹⁴⁴ See footnote 2 above.

¹⁴⁵ See Duffy, H. (2018). *Strategic Human Rights Litigation: Understanding and Maximising*. Hart Publishing.

¹⁴⁶ *Brown et al. v. Board of Education of Topeka et. al.* 347 U.S. 483 (1954). [URL](#); Amdt14.S1.8.2.1 *Brown v. Board of Education*. Constitution Annotated. [URL](#)

¹⁴⁷ Ramsden, M. Gledhill, K. (2019). *Defining Strategic Litigation*. 4 Civil Justice Quarterly (2019) 407. [URL](#). On public interest litigation in the United Kingdom and the United States see Harlow, C., Rawlings, R. (1992). *Pressure Through Law*. Routledge.

92. Does biodiversity-conservation case law contain comparable strategic proceedings intended to produce wider social and legal effects beyond the resolution of a particular dispute?

7. “Neubauer” in Biodiversity Field

93. In October 2024, the environmental non-governmental organization Bund für Umwelt und Naturschutz Deutschland (**BUND**), together with several other applicants, filed a constitutional complaint before the German Federal Constitutional Court seeking the enactment of a comprehensive legislative framework on biodiversity protection.¹⁴⁸
94. The complaint was modelled on the successful climate case *Neubauer et al. v. Germany*¹⁴⁹, in which the applicants secured a finding that the statutory framework governing greenhouse-gas-reduction targets and the distribution of climate change burdens across future generations was inadequate.
95. In the new constitutional complaint, the applicants analyze the systemic causes of biodiversity loss and explain how it affects the enjoyment of human rights, particularly the rights to life, physical integrity, and property. As a fundamental element of all functioning ecosystems, biodiversity provides numerous essential ecosystem services to animals and people: it supports clean air and water, contributes to soil formation and fertility, and underpins food security. The applicants therefore argue that biodiversity loss has serious consequences for human life and the enjoyment of fundamental rights.¹⁵⁰
96. They compare the current approach of public authorities to biodiversity conservation with a scenario in which climate change is allowed to proceed without mitigation measures. The applicants contend that the draft National Biodiversity Strategy 2030 contains vague objectives lacking a scientific basis and provides neither mechanisms nor indicators demonstrating a genuine State commitment to achieve them.¹⁵¹ As for the existing legislative framework, BUND and the other organizations argue that fragmented enactments devoted to individual sectors of natural-resource-based economic activity and to the protection of discrete environmental components cannot effectively address the global drivers of biodiversity loss.¹⁵²
97. The case remains far from a hearing, and information concerning the progress of the complaint is scarce. Even so, the initiative is already regarded as a step towards a new form of biodiversity proceeding – strategic litigation.¹⁵³ It may open the way for cases that frame biodiversity loss as a systemic problem requiring a comprehensive and decisive response, rather than confining judicial protection to individual natural components on a case-by-case basis.

¹⁴⁸ BUND erhebt weltweit erste Verfassungsklage auf bessere Naturschutz-Gesetzgebung. BUND. [URL](#)

¹⁴⁹ *Neubauer, et al. v. Germany*. Climate Litigation Database. [URL](#)

¹⁵⁰ Verfassungsbeschwerde des Bund für Umwelt und Naturschutz Deutschland e.V et al. gegen das Unterlassen geeigneter gesetzlicher Vorschriften bezogen auf die Erhaltung der Biodiversität durch die Bundesrepublik Deutschland. 22 Oktober 2024. 308/23FH/sk, p. 22. [URL](#)

¹⁵¹ *Ibid.*, p. 53.

¹⁵² *Ibid.*, pp. 54–67.

¹⁵³ Hildt, L. (2024). *A Leap Forward for Biodiversity Litigation: The Naturschutz-Klage in the Biodiversity and Climate Litigation Context*. VerfBlog. [URL](#)

8. Azerbaijan v. Armenia Arbitration

98. On 12 February 2025, Azerbaijan initiated an arbitration administered by the Permanent Court of Arbitration and brought claims against Armenia.¹⁵⁴ It is the first inter-State arbitration directly concerned with State obligations to protect biodiversity.
99. Azerbaijan alleges that, during the armed conflict over Nagorno-Karabakh and what it describes as the unlawful occupation of Azerbaijani territory, Armenia committed a series of internationally wrongful acts in breach of treaty obligations to protect biodiversity and habitats.¹⁵⁵ Those obligations arise under the Convention on the Conservation of European Wildlife and Natural Habitats (**Bern Convention**).¹⁵⁶ The legal basis of the claim may be expanded in the written pleadings to include customary international law obligations.
100. Notably, Azerbaijan has stated officially that it intends to seek full restitution, including restoration of damaged habitats and lost biodiversity.¹⁵⁷ The arbitration may therefore become a leading inter-State case on the assessment of environmental damage and the forms of reparation required to restore the natural environment and biodiversity to a favourable condition.¹⁵⁸
101. The proceedings are currently in the written phase on preliminary objections, with oral hearings scheduled for March 2027.¹⁵⁹
102. Is the case strategic? In the absence of written pleadings on the merits, it is difficult to determine whether Azerbaijan's claims and arguments extend beyond the specific legal conflict and seek broader effects relevant to future disputes between other States, the implementation of multilateral environmental agreements, or inter-State negotiations in this field.
103. Environmental damage allegedly caused by Armenia has also featured in Azerbaijan's case against Armenia¹⁶⁰ before the ICJ under the International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**).¹⁶¹ The ICJ accepted that conduct causing environmental harm may constitute racial discrimination if it possesses the characteristics set

¹⁵⁴ No:046/25, *Press release on the Statement of Claim filed by the Republic of Azerbaijan against Armenia under the arbitration within the Bern Convention*. (2025). Ministry of Foreign Affairs of the Republic of Azerbaijan. [URL](#); Novruz, A. (2025). *Azerbaijan files arbitration claim against Armenia over environmental destruction*. Azernews. [URL](#); Armenia to refute Azerbaijan's baseless claims in Bern Convention arbitration - Yeghishe Kirakosyan. (2025). Armenpress. [URL](#)

¹⁵⁵ No:046/25, *Press release on the Statement of Claim filed by the Republic of Azerbaijan against Armenia under the arbitration within the Bern Convention*. (2025). Ministry of Foreign Affairs of the Republic of Azerbaijan. [URL](#)

¹⁵⁶ PCA. Bern Convention Arbitration (*The Republic of Azerbaijan v. The Republic of Armenia*). PCA Case No. 2023-60. [URL](#)

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¹⁵⁸ For further reading see: Abualrob, W., Longobardo, M., Mackenzie, R. (2023). *Applying International Environmental Law Conventions in Occupied Territory: The Azerbaijan v. Armenia Case under the Bern Convention*. EJIL:Talk! [URL](#); Kaminski, I. (2023). *Azerbaijan sues Armenia for wartime environmental damage*. The Guardian. [URL](#); Nakajima, K. (2023). *And the Azerbaijan-Armenia Lawfare Expanded: The Arbitration brought by Azerbaijan under the Bern Convention*. VerfBlog. [URL](#)

¹⁵⁹ PCA. Procedural Order No. 3 (Procedural Timetable for the Preliminary Objections Phase). PCA Case No. 2023-60. [URL](#)

¹⁶⁰ ICJ. Application Instituting Proceedings filed in the Registry of the Court on 23 September 2021. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Azerbaijan v. Armenia*). Para. 98(b). [URL](#); Verbatim record 2024/22. Public sitting held on Tuesday 23 April 2024, at 10 a.m., at the Peace Palace, President Salam presiding, in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Azerbaijan v. Armenia*). Pp. 55–66. [URL](#)

¹⁶¹ International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965 (entered into force for the Russian Federation (USSR) on 6 March 1969).

out in Article 1(1) of CERD.¹⁶² It nevertheless held that it lacked jurisdiction over Azerbaijan's claims concerning environmental harm.¹⁶³

104. The future course of the arbitration therefore merits close attention. Azerbaijan's attempt before the ICJ to frame environmental-damage allegations outside the confines of environmental agreements suggests that the arbitration may produce far-reaching arguments and findings concerning nature conservation generally and biodiversity in particular, with relevance extending beyond the treaty regime of the Bern Convention.

¹⁶² ICJ. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Azerbaijan v. Armenia*). Judgment of 12 November 2024. Para. 95. [URL](#)

¹⁶³ *Ibid.*, paras 95–100.

Conclusion

105. Environmental degradation and biodiversity loss constitute a threat of global proportions. Where State action is inadequate, recourse to judicial mechanisms is one of the effective means of protecting species and ecosystems.
106. As the analysis above demonstrates, biodiversity case law is extensive at both the national and international levels. Taken together, however, these cases have not produced the qualitatively different effect of placing global biodiversity loss itself directly before the courts. Applicants and judges alike have yet to engage with the problem on those terms.
107. Applying fragmented legal frameworks, national courts most often adjudicate challenges to acts or decisions of public authorities and officials for non-compliance with procedural requirements. The conduct of private actors is assessed against environmental standards and public-law requirements concerning the sustainable and rational use of natural resources. The resulting case law is so specific and fact-intensive that it can rarely create precedent or serve as a foundation for broader litigation addressing the systemic causes of environmental degradation.
108. Some cases nevertheless advance an ecocentric paradigm for the legal protection of nature and its components, laying the foundations for rights held by nature and individual ecosystems to be enforced and protected. This case law rests on the idea that nature, species, and ecosystems possess intrinsic value – not merely value as sources of economic well-being for humankind – and should therefore have legal means of protection in their own right.
109. This approach is gradually receiving international recognition. The IACtHR, for example, expressly emphasizes that recognizing rights held by nature is necessary not only to give nature procedural standing in judicial proceedings, but also to generate corresponding duties for the State and its authorities to conserve species and ecosystems and maintain them in a favourable condition.
110. International courts and tribunals have, however, rarely encountered cases directly concerning the diversity of living resources. Most of their relevant judgments and advisory opinions did not have biodiversity as their immediate subject matter. Though their broader findings on the development of environmental law – such as the customary obligation to prevent significant environmental harm – are important to the conservation of biodiversity as a component of the environment.
111. Some cases, while not themselves strategic litigation because they do not seek to resolve global biodiversity-conservation issues, nevertheless acquire strategic significance. This can be seen in the practice of national and international courts (especially the IACtHR and the CJEU), where judges resolving a local problem formulate broadly applicable principles concerning biodiversity conservation and the obligations of States and individuals in relation to natural components.
112. Emerging attempts at strategic litigation at the national level – notably the BUND complaint – and inter-State proceedings under species-conservation treaties, such as the *Azerbaijan v. Armenia* arbitration, may be steps towards treating biodiversity loss judicially as a **global challenge**. Such proceedings could help strengthen the multilateral legal regime and cooperation in this field through recourse to international courts and tribunals.
113. At the same time, ongoing national and international proceedings, although they continue to add to a fragmented and narrowly focused body of case law, remain the principal means of

judicially protecting biodiversity. They have sustained, and will continue to sustain, the legal framework for preventing the degradation of species and ecosystems.

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